IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

MFA.No. 1009 of 2001()

OPMV.1105/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD
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APPELLANT - PETITIONER:

R. PRABHAKARAN, S/O. LATE RAMANKUTTY, AGED 52 YEARS, PRABHATHAM, KOIL STREET, PARAKKUNNAM, PALAKKAD.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS - RESPONDENTS :
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1. THE MANAGING DIRECTOR, CHERAN TRANSPORTS CORPORATION, COIMBATORE (OWNER OF BUS NO.TCB 1665).

2. S. MOHANAN, S/O. SUBRAMANIAN, AGED 39 YEARS, DOOR NO.267, MARUTHAMALI ROAD, P.N. PUDUR, COIMBATORE (D.L. NO. 443333/83) (DELETED)

THE NAME OF 2ND RESPONDENT IS DELTED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 18.8.2007 ON I.A. NO.1771/2007.

BY ADV. SRI.P.RAVINDRAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2007, HE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1009 OF 2001

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Dated this the 17th day of October, 2007

J U D G M E N T

Heard. Admitted. Advocate Shri P.Ravindran takes notice for the respondent. Appeal itself is heard and disposed of as agreed to by both sides.

2. Appeal is filed against the award passed by the Motor Accidents Claims Tribunal, Palakkad in O.P(MV) No.1105 of 1994. On 9.1.1994 petitioner sustained injuries in a motor vehicle accident involving a stage carriage bus owned by the first respondent and driven by the second respondent, who was deleted from the party array later. It was averred that the accident occurred due to the rash or negligent driving of the bus by the second respondent. Tribunal fixed the compensation at Rs.9,750/-. But finding that the petitioner also negligent, Tribunal awarded only Rs.4,875/- to the petitioner being 50% of the compensation awarded. Challenging that award, this appeal is filed.

3. Learned counsel appearing for the appellant strenuously argued before me that a criminal case was

registered against the driver of the bus and no criminal case registered against the appellant. It is also argued that the accident occurred solely due to the negligence of the driver of the bus. The Tribunal, after considering the evidence on record found that the petitioner was riding a Scooter and the accident occurred at a traffic junction. Evidence also shows that on getting signal both the vehicles started to proceed on the same direction and there was some confusion as to which vehicle to proceed first. Considering all aspects of the matter, I am of the view that there was negligence on the part of the appellant also, but to the extent of 30%. The proportion of negligence fixed is to be altered to 70:30. So the petitioner is entitled to get a compensation of Rs.6,825/-.

In the result, appeal is allowed in part. Petitioner is allowed to recover an amount of Rs.1,950/- also as additional compensation which will carry interest at the rate of 6% from the date of petition till date of realisation. Respondent is directed to deposit that amount also. On deposit, the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1009 OF 2001

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J U D G M E N T

17TH OCTOBER, 2007